

Yakup Sari SBN: 336030
Sari Law Firm
540 N Golden Cir Dr #303
Santa Ana, CA 92705
Tel No. 949-426-5071
Email: info@sarilaw.us

Attorney for Plainfiff
Ozkurt Cihan Yildiz

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Ozkurt Cihan Yildiz dba
PersonalizedbyQueen an individual;

Plaintiff,

vs.

Saurabh Srivastava dba Cherrycatshop,
Does 1-10;

Defendant,

Case No.:

**COMPLAINT FOR DECLARATORY
JUDGMENT OF NON-
INFRINGEMENT**

For its complaint, Plaintiff Ozkurt Cihan Yildiz, hereinafter
“PersonalizedbyQueen”, by and through its attorneys Sari Law Firm, asserts as
follows:

I. THE PARTIES

1. OZKURT CIHAN YILDIZ is a resident of California Orange County. He owns
the PersonalizedbyQueen Etsy Seller Account. PersonalizedbyQueen has been, at all

1 times relevant herein, engaged in the creation and sale of personalized items and
2 gifts, operating primarily through the online marketplace, Etsy Inc., hereinafter
3 “Etsy.” The business focuses on offering unique, custom-made products tailored to
4 individual preferences, which include but are not limited to personalized home decor,
5 apparel, and accessories. PersonalizedbyQueen has established a reputation for
6 originality and quality, catering to a diverse clientele across the United States.

9 2. Plaintiff believes and is informed that SAURABH SRIVASTAVA trading as
10 Cherrycatshop, hereinafter “Cherry”, and owns Cherry located at 444 Alaska
11 Avenue, Suite #BPN002 Torrance CA 90503, USA. Cherry alleged copyright
12 infringement against PersonalizedbyQueen and claims copyright ownership over
13 certain designs or products that are alleged to have been infringed upon by
14 PersonalizedbyQueen.

17 3. Plaintiff believes and is informed that Cherrycatshop, hereinafter “Cherry”, is
18 located at 444 Alaska Avenue, Suite #BPN002 Torrance CA 90503, USA. Cherry
19 alleged copyright infringement against PersonalizedbyQueen and claims copyright
20 ownership over certain designs or products that are alleged to have been infringed
21 upon by PersonalizedbyQueen.

24 4. The true names and capacities of the defendants named herein as DOES 1 through
25 10, whether individual, corporate, associate, or otherwise, are unknown to Plaintiff,
26 who therefore sues said defendants by said fictitious names. Plaintiff is informed and
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believes, and thereon alleges, that each of the defendants designated herein as DOE is legally responsible for the events and happenings hereinafter alleged and legally caused injury and damages proximately thereby to Plaintiff as alleged herein. Plaintiff will seek leave to amend the Complaint when the true names and capacities of said DOE defendants have been ascertained. SAURABH SRIVASTAVA and DOES 1 through 10 are hereinafter collectively referred to as “Defendants.”

II. JURISDICTION AND VENUE

5. Jurisdiction is proper in this Court because this litigation arises under federal statutes, namely the Copyright Act (17 U.S.C. § 101 et seq.) for copyright concerns. Accordingly, jurisdiction is conferred under 28 U.S.C. § 1331, which grants the Court authority over federal questions, and 28 U.S.C. § 1338(a), which pertains specifically to cases involving trademarks and copyrights. Additionally, the Declaratory Judgment Act (28 U.S.C. § 2201) provides a basis for the court's authority to declare the rights and other legal relations of any interested party seeking such declaration, making it applicable for the resolution of the present controversy

6. Personal Jurisdiction over Cherry is established based on the assertion that Cherry engages in business activities that extend to California Jurisdiction, including but not limited to, the operation of an online storefront on Etsy that is accessible to residents within this district. Such activities likely include transactions with residents of this jurisdiction, as well as the use of digital and physical marketing strategies

1 aimed at customers located herein. These actions provide sufficient minimum
2 contacts with the forum to warrant the exercise of personal jurisdiction in accordance
3 with principles of fair play and substantial justice.
4

5 7. Venue is deemed appropriate in this district pursuant to 28 U.S.C. §§ 1391(b) and
6 1391(c), given that the defendant, Cherry, conducts business that reaches into this
7 jurisdiction. The impact of its alleged infringement claims and the subsequent effects
8 on PersonalizedbyQueen's business operations manifest significantly herein.
9 Therefore, this district holds a substantial connection to the events giving rise to the
10 claim, making it a proper venue for this litigation.
11
12

13 8. An actual controversy has emerged between PersonalizedbyQueen and Cherry,
14 necessitating judicial intervention. The dispute revolves around Cherry's allegations
15 of copyright infringement against PersonalizedbyQueen, specifically targeting
16 certain product listings and designs offered by PersonalizedbyQueen on Etsy. These
17 allegations have led to the suspension of PersonalizedbyQueen's listings based on
18 Cherry's claims. These allegations place PersonalizedbyQueen at risk of significant
19 harm, both financially and in terms of its business reputation. This confrontation
20 underscores the need for a declaratory judgment to resolve the dispute and clarify
21 the parties' rights and obligations under the law.
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26 **III. GENERAL ALLEGATIONS**

27 **A. PersonalizedbyQueen's Product Offerings**

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1 9. PersonalizedbyQueen specializes in creating and selling custom-made,
2 personalized products through the online marketplace Etsy. This range includes, but
3 is not limited to, personalized home décor, apparel, and accessories. Each item is
4 designed to meet the specific requests and preferences of customers, thereby offering
5 a unique, tailored shopping experience.
6
7

8 10. Customers discover PersonalizedbyQueen's products by searching on Etsy's
9 platform. Upon finding an item of interest, they can customize their purchase
10 according to specific personalization options provided by PersonalizedbyQueen.
11 This process often involves selecting colors, entering custom text, or choosing from
12 a variety of design options to create a product that is uniquely theirs.
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15 11. PersonalizedbyQueen has successfully operated on Etsy, establishing a strong
16 presence and loyal customer base.
17

18 12. PersonalizedbyQueen has not sought trademark or copyright registration for its
19 brand name or specific product designs due to the bespoke nature of its offerings.
20 Each product is custom-made and personalized, rendering the concept of a single,
21 copyrighted product design impractical.
22

23 13. PersonalizedbyQueen received a copyright infringement notice from Cherry on
24 February 06, 2024. **See, Exhibit A.**
25

26 14. In response to the infringement notice from Cherry, PersonalizedbyQueen
27 conducted a thorough review of its product listings and designs. This review
28

1 confirmed that the designs in question were original creations by
2 PersonalizedbyQueen, developed independently without reference to any
3 copyrighted material claimed by Cherry. Plaintiff's attorney Yakup Sari sent an e-
4 mail to Cherry to resolve this matter on February 6, 2024. However, there is no
5 response as of this Complaint is filed. **See, Exhibit B.**

8 15. Thereafter, Mr. Sari sent a notice of non-infringement letter to Etsy, Inc at
9 legal@etsy.com on February 08, 2024. However, there is no response as of this
10 Complaint is filed. **See, Exhibit C.**

12 16. The notice has led to the suspension of PersonalizedbyQueen's listings on Etsy,
13 specifically listing numbers "1672931557," "1661959417," and "1648454956." The
14 defense presented herein seeks a declaratory judgment for non-infringement, arguing
15 that the claims of copyright infringement are without merit and that
16 PersonalizedbyQueen's products do not violate any copyrighted material purportedly
17 owned by Cherry.

18 17. PersonalizedbyQueen requests the prompt reinstatement of its listings on Etsy,
19 emphasizing the significant financial and reputational harm caused by the
20 suspension. The defense underscores the legal and factual bases negating the
21 infringement claims and asserts the rights of PersonalizedbyQueen to continue its
22 lawful business activities without undue interference.

1 18.The current dispute with Cherry highlights the challenges faced by small,
2 independent businesses operating in online marketplaces. PersonalizedbyQueen
3 seeks a declaratory judgment of non-infringement to resolve this matter promptly
4 and fairly, enabling the reinstatement of its Etsy listings and the continuation of its
5 business operations without further disruption.
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8 IV. THE PRESENT DISPUTE

9 19.On a date preceding the legal action, PersonalizedbyQueen received a letter from
10 Etsy. **Exhibit A.** The letter claimed that PersonalizedbyQueen's products infringed
11 upon Cherry's copyright rights. The communication specifically alleged that
12 PersonalizedbyQueen's use of certain design elements in their personalized items
13 was too similar to those protected under Cherry's copyright, leading to potential
14 customer confusion and unauthorized benefit from Cherry's brand.
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18 20.Cherry failed to provide any explanation to PersonalizedbyQueen regarding how
19 the Copyright infringement occurred.
20

21 21.In response to the allegations, PersonalizedbyQueen reviewed their product
22 listings and design elements, ensuring that their offerings did not infringe on any
23 copyrighted or trademarked material. Despite efforts to Etsy to clarify the
24 distinctiveness of their products, the dispute with Cherry remained unresolved,
25 leading to the suspension of PersonalizedbyQueen's listings on Etsy.
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1 22. PersonalizedbyQueen is concerned that without a clear resolution, the dispute
2 may continue to negatively impact their business, leading to further financial losses
3 and damage to their reputation. The letter from Etsy have placed significant pressure
4 on PersonalizedbyQueen to alter their business practices without substantive
5 evidence of infringement.
6
7

8 **V. CLAIMS FOR RELIEF**

9 **CLAIM ONE**

10 **(Invalidity of Copyright Claims, 17 U.S.C. § 101 et seq.)**

11
12 23. PersonalizedbyQueen incorporates by reference the allegations contained in
13 paragraphs 1 through 20, inclusive, as if fully set forth herein.
14

15 24. This is a declaratory judgment under the United States Copyright Act of 1976,
16 17 U.S.C. § 101 et seq. (the "Copyright Act"), and the Declaratory Judgment Acts,
17 28 U.S.C. §§ 2201 and 2202.
18

19 25. A justiciable controversy exists since the infringement notice prevented Plaintiff
20 from selling, advertising, and distributing the products in the listing that Plaintiff
21 invested thousands of dollars in advertisement fees, based on allegations of
22 copyright infringement by Cherry. PersonalizedbyQueen seeks judicial relief to
23 resolve this dispute and affirms their rights to continue their business operations in
24 the specific listings.
25
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1 26. PersonalizedbyQueen requests this Court to issue an order declaring that the
2 alleged copyrights asserted by Cherry, specifically regarding the use of certain
3 design elements and the conceptual similarity of products, are invalid and
4 unenforceable for, among other reasons, the following:
5

6
7 ***a. Lack of originality:*** The design elements and conceptual themes alleged to be
8 copyrighted do not meet the originality and creativity standards required for
9 copyright protection. The Copyright Act protects original works of authorship
10 fixed in any tangible medium of expression, providing such works possess some
11 minimal degree of creativity. The disputed elements, as described by Cherry, are
12 either too generic or widely used in the industry to be considered original or
13 possess the requisite creativity for copyright protection.
14

15
16 Furthermore, pursuant to 37 C.F.R. § 202.1(a), copyright protection does not
17 extend to names, titles, short phrases, or simple variations of typographic
18 ornamentation, lettering, or coloring. These categories are expressly identified as
19 not subject to copyright protection or registration. The disputed design elements
20 and product themes, as claimed by Cherry, fall within these categories, thereby
21 rendering any copyright claims over such elements invalid and unenforceable.
22

23
24 ***b. Absence of Direct Proof of Copyright Ownership:*** Cherry has not provided
25 conclusive evidence of copyright ownership for the design elements cited in the
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1 infringement notice. The ownership of the designs in question remains unclear,
2 undermining the credibility and enforceability of the copyright claim.

3
4 *c. Distinctiveness of Works:* A critical examination of the works reveals
5 significant differences in their conceptual basis and visual elements. In the
6 context of the provided images which represent the defendant's and plaintiff's
7 products, it's evident that the two T-shirts exhibit distinct visual elements, text,
8 and overall design composition, which substantiates the argument for non-
9 infringement of copyright claims.
10
11



23 The Defendant's Product
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The Plaintiff's Product

27. The defendant's product features the text in a gold, script typeface, indicating that the text is subject to change based on customer preference. The images on the T-shirt are arranged in a loose, collage-like format, with no specific thematic background, other than a generic, unadorned backdrop.

28. Conversely, the plaintiff's product displays the text in a bold, gothic font, with a distinct graphic background that includes lightning and a stylized aura. The images of the individual are edited with a red overlay and arranged in a pattern that forms a circle around the central text, which differs significantly from the layout on the defendant's shirt.

1 29. Cherrycatshop is an online retail entity specializing in the sale of tshirt
2 merchandise. **See, Exhibit D.** The business model of Cherry hinges on its operation
3 through an e-commerce platform, facilitating the distribution of a wide range of
4 tshirt prominently featuring categories like custom apparel, occasion-specific items,
5 and sports shirts. Cherrycatshop claims rights to certain designs or products that it
6 alleges have been copied by PersonalizedbyQueen.
7

8
9 30. However, copyright law does not protect ideas, concepts, or methodologies
10 but rather the expression of those ideas. The aesthetic and background design of
11 PersonalizedbyQueen's products significantly differ from those claimed by Cherry,
12 indicating no direct copying or derivation.
13
14

15 31. PersonalizedbyQueen contends that the subsequent actions taken by Cherry
16 are based on an erroneous interpretation of copyright law and an overextension of
17 copyright protection to elements that are not eligible for such protection.
18

19 32. Through this claim for relief, PersonalizedbyQueen seeks judicial
20 confirmation of the non-infringement of Cherry's alleged copyrights, thereby
21 enabling the reinstatement of their suspended Etsy listings and the continuation of
22 their lawful business practices.
23
24

25 **CLAIM TWO**

26 **(Declaratory Judgment of Non-infringement of Copyrights, 17 U.S.C. § 101 et**
27 **seq.)**
28

1 33. PersonalizedbyQueen incorporates by reference the allegations contained in
2 paragraphs 1 through 30, inclusive, as if fully set forth herein.
3

4 34. This is a declaratory judgment under the United States Copyright Act of 1976,
5 17 U.S.C. § 101 et seq. (the "Copyright Act"), and the Declaratory Judgment Acts,
6 28 U.S.C. §§ 2201 and 2202. A real and justiciable controversy has arisen from the
7 credible threat and the demand from Saurabh Srivastava, trading as Cherrycatshop,
8 to cease the use and sale of PersonalizedbyQueen's products based on alleged
9 copyright infringement. Consequently, PersonalizedbyQueen seeks relief from this
10 court.
11
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13 35. PersonalizedbyQueen is entitled to a declaratory judgment affirming that their
14 products do not infringe upon any valid copyright claimed by Cherry, particularly
15 regarding the use of certain design elements or themes within their personalized
16 items. PersonalizedbyQueen maintains that their creations are original, do not
17 replicate any copyrighted material owned by Cherry, and thus do not violate any of
18 his copyright rights.
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22 36. PersonalizedbyQueen is entitled to declaratory judgment that it is not infringing,
23 has not infringed, and is not liable for infringing any valid Copyright owned by
24 Cherry.
25

26 37. Cherry's claim lacks a clear demonstration of valid copyright ownership,
27 particularly as it pertains to the design cited in the infringement notice.
28

1 38. The distinction between the works of PersonalizedbyQueen and those claimed
2 by Cherry is evident, primarily in their conceptual basis and visual elements. The
3
4 expression of ideas presented by PersonalizedbyQueen's products is markedly
5 different from any work that Cherry claims to own, and the background design
6 specifically does not infringe on Cherry's alleged copyrights.
7

8 39. An actual, present, and justiciable controversy has arisen between
9 PersonalizedbyQueen and Cherry, concerning PersonalizedbyQueen's right to use
10 generic design elements and common phrases in their product offerings without
11 infringing upon Cherry's alleged copyrights.
12

13 40. PersonalizedbyQueen seeks a declaratory judgment from this Court stating
14 that their use of generic design elements, common phrases, and the overall
15 conceptual themes of their products do not constitute copyright infringement. This
16 declaration would affirm PersonalizedbyQueen's right to continue its business
17 operations and reinstate its Etsy listings without the threat of legal action based on
18 unfounded claims of infringement.
19
20
21

22 41. PersonalizedbyQueen requests this Court to declare their operations and
23 product offerings as non-infringing on any valid copyrights held by Cherry thereby
24 allowing them to continue their business without the threat of unwarranted legal
25 challenges.
26
27

28 CLAIM THREE

(Declaratory Judgment of Unfair Competition Due to Defendant's Actions)

42. Plaintiff PersonalizedbyQueen repeats and realleges paragraphs 1 through 39 hereof, as if fully set forth herein.

43. As a direct consequence of Defendant Cherry, unfounded legal actions and public allegations, Plaintiff PersonalizedbyQueen contends that it has been subjected to unfair competition. Cherry's claims have imposed undue constraints on PersonalizedbyQueen's ability to conduct business, leading to financial losses and reputational damage due to the unwarranted suspension of its Etsy listings.

44. The controversy happened by Defendant Cherry's accusations holds sufficient immediacy and reality that warrants the issuance of a declaratory judgment. Such a judgment is sought to affirm that the unfair competitive conditions have been instigated by Cherry's actions, not by any conduct of PersonalizedbyQueen.

45. Cherry's conduct, including but not limited to the issuance of baseless infringement notices and the consequent suspension of PersonalizedbyQueen's product listings, has disrupted the marketplace's competitive balance by unfairly sidelining PersonalizedbyQueen. This has potentially steered consumers away from PersonalizedbyQueen's products, thereby unfairly benefiting Cherry.

46. Cherry's interference with PersonalizedbyQueen's business and its unfounded claims are the genesis of unfair competition in this scenario. Cherry's actions have created a false narrative of infringement, causing harm to

1 PersonalizedbyQueen's commercial standing and competitive position in the
2 marketplace.
3

4 47. A judicial declaration is necessary and appropriate to establish that it is
5 Cherry's actions that constitute unfair competition against PersonalizedbyQueen,
6 which is entitled to continue its lawful business practices without the shadow of
7
8 Cherry's uncorroborated accusations.

9 48. Plaintiff PersonalizedbyQueen is entitled to a declaratory judgment that not
10
11 only has it not engaged in any unfair competition but also that Cherry's actions and
12 claims have resulted in unfair competition to the detriment of PersonalizedbyQueen.
13
14 Such a declaration would serve to vindicate PersonalizedbyQueen's business
15 practices and reaffirm its right to compete fairly in the marketplace under 15 U.S.C.
16 § 1125(a), under the pertinent California state law, and under the established
17
18 common law principles of unfair competition.

19 **PRAYER FOR RELIEF**

20
21 **WHEREFORE**, PersonalizedbyQueen respectfully requests that this
22 Court grant the following relief:

23
24 1. An order declaring that the alleged copyrights claimed by Saurabh
25 Srivastava, trading as Cherrycatshop, particularly regarding the use of design
26 elements and themes are invalid and unenforceable.

27
28 2. An order declaring that the design elements and product themes

1 claimed by Cherry, which are generic and widely used in the industry, do not
2 meet the originality and creativity standards required for copyright protection,
3 and are further excluded from protection as they fall under the categories
4 identified in 37 C.F.R. § 202.1(a) as not subject to copyright.
5

6
7 3. An order declaring that Cherry has not provided conclusive evidence
8 of copyright ownership, particularly regarding the design elements specified
9 in the infringement notice, thus undermining the credibility and enforceability
10 of the copyright claim.
11

12 4. An order declaring that PersonalizedbyQueen has not infringed
13 Cherrycatshop`s copyright;
14

15 5. An order for the prompt reinstatement of PersonalizedbyQueen's
16 Etsy listings to alleviate the ongoing financial losses and to prevent further
17 harm to PersonalizedbyQueen's reputation and business operations.
18

19 6. An order declaring that the alleged copyrights claimed by
20 Cherrycatshop are invalid and unenforceable.
21

22 7. An order declaring that Defendant has violated unfair competition in
23 violation of 15 U.S.C. § 1125(a) or California Law;
24

25 8. An order awarding PersonalizedbyQueen attorneys' fees, costs, and
26 expenses incurred in connection with this action.
27
28

9. An order granting such other and further relief as this Court deems just and proper.

Respectfully Submitted,

Dated: February 24, 2024

By: /s/Yakup Sari
Yakup Sari, Esq.

Attorney for Plaintiff
Ozkurt Cihan Yildiz